IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 90 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVINDBHAI MULCHANDBHAI JAGTAP & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JS UNWALA FOR MR RR MARSHALL for Appellant(s) : 1 - 3.
MR PD BHATTE,APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/12/2007

ORAL JUDGMENT

1. The appeal is directed against the judgement and order dated 18.1.1997 rendered by learned

Additional Sessions Judge, Surat in Sessions Case No. 62/1994.

2. The appellants were the original accused. They were charged with offences punishable under Sections 498-A, 306 read with Section 114 of the Indian Penal Code. Learned Additional Sessions Judge convicted all the appellants and sentenced them to simple imprisonment for two years for offence punishable under Section 498-A and for five years for offence punishable under Section 306 of the Indian Penal Code.

3. Broadly stated the prosecution case was that the deceased Ratnaben was married to one Nareshbhai in the year 1989. Accused No.1 i.e. appellant No.1 herein was the elder brother of Naresh. Accused No.2 i.e. appellant No.2 herein was the mother of Naresh and accused No.3 i.e. the appellant No.3 herein was the sister of Naresh. The accused, deceased Ratnaben and her husband Naresh were residing together at Surat. Appellant No.1 and other appellants were mentally and physically torturing the deceased. It is particularly, alleged that appellant No.1 had doubt about the character of deceased Ratnaben. He had scolded and threatened her with dire consequences only a few days before the incident. Ratnaben therefore, on 19.4.1993, when she was alone in the house, poured kerosene on herself and set herself ablaze. She was taken to

Government hospital at Surat where she expired after five days. Unfortunately, her young son who was also playing nearby got burnt and succumbed to injuries.

4. To prove the charge, prosecution relied on testimonies of the complainant Rajendra Ambadas Sonavane-PW1(exh.8) brother of Ratnaben, Sumanben Ambalal-PW2(exh.11) mother of Ratnaben and two dying declarations one at exh.17 recorded by the Executive Magistrate-PW4(exh.15) and another exh.30 recorded by the Investigating Officer-PW6(exh.29). Prosecution also relied on the testimonies of Dr. Pravinbhai Kalidas Patel-PW5(exh.26) who produced the papers of medical treatment given to the deceased when she was admitted in the hospital as also of Dr. Balubhai Ravjibhai Panchani-PW3(exh.12) who had carried out the postmortem of dead body of deceased Ratnaben.

5. Rajendra Ambadas Sonavane-PW1 was examined at exh.8. In his deposition, he stated that Naresh and Ratna were living in a joint family with the accused. On 20.4.1993, Arvind's cousin brother came to Ahmedabad and informed him that Ratna has got burnt and she is serious. The witness along with other family members therefore, reached Surat Civil Hospital by quarter to 12 in the afternoon on 20.4.1993. When he saw Ratna he found that she had got burnt from head to toe.

He had no discussion with his sister. However, upon being asked as to how she got burnt, she stated that she had poured kerosene on herself and set herself ablaze. When asked why did she do that, Ratna was not in a position to give any answer. The witness stated that Ratna was able to say only yes or no to the questions asked to her. He did not have any discussion with Ratna, but his mother spoke to her at some length.

5.1 In the cross examination, he stated that about a month before the incident, Ratna had come to Ahmedabad and stayed for four or five days. After returning from Ahmedabad, Ratna had not written any letter. He stated that between husband and wife there was no quarrel. He stated that till the date of incident the accused persons used to come to his house. He stated that accused Nos. 2 and 3 were frequently coming to the hospital when Ratna was admitted there and looking after her. Accused No.3 also used to come there often. He was confronted with certain improvements compared to his statement before the police. He stated that he did not speak to Ratna for long since she was not in a position to talk properly. He stated that after he reached the hospital Ratna's health went on deteriorating. He stated that about the doubt regarding the character of Ratna, he came to know about a month before the incident when Ratna had come to his house.

6. Sumanben Ambalal-PW2 was examined at exh.11. She stated that initially Ratna was treated well by her in-laws. Thereafter, accused no.1 sold his house and started staying with Ratna and her husband. Since then the accused started accusing Ratna of bad character. Accused No.1 in fact demanded illicit relations from Ratna. Upon being informed about the incident, she and other family members rushed to Surat. She found that Ratna had got burnt on the whole body. She lived for five days. Ratna told the witness that accused used to treat her with cruelty. Her husband gave her Rs.100/- and told her to go to her parents' place. When Ratna tried to leave, the accused stopped her and accused No.1 threatened her that she will be set on fire and he would commit rape on her, upon which Ratna poured kerosene on herself and set herself ablaze.

6.1 In the cross examination, she admitted that before the police she did not state that Ratna informed her that her husband had given her Rs.100/- and told her to leave. She stated that before the police though she stated that when Ratna tried to leave, the accused prevented her and accused No.1 threatened her, but the police did not record such a statement. She also stated that she had in her statement before the police stated that accused No.1 was insisting on

keeping illicit relations with Ratna and accused Nos. 2 and 3 were pressurizing her to do so, but the police did not record such a statement. She also stated that police recorded Ratna's statement in her presence. At that time her husband, her son and two daughters and her brother were also present. She stated that when she arrived, Ratna was in normal condition. She was giving reply like normal person to questions put to her. When the police was asking questions to Ratna, she was giving fluent answers.

7. Dr. Balubhai Ravjibhai Panchani-PW3(exh.12), carried out the postmortem on the body of Ratnaben. He stated that injuries on the body could be result of a person pouring kerosene on oneself and setting fire.

7.1 In the cross examination, he agreed that such injuries could also be caused by accidental fire.

8. Rameshchandra Pransankar Joshi-PW4 was examined at exh.15. He was the Executive Magistrate who had recorded the dying declaration of Ratnaben. He stated that pursuant to Yadi exh.17, he went to the hospital for recoding the dying declaration of Ratnaben. He reached the hospital at 1:50 in the afternoon on 20.4.1993. He inquired about the Ward where Ratnaben was kept. He thereafter, started recording dying

declaration of Ratnaben. To the question regarding cause of burn injuries, Ratnaben stated that she poured kerosene on herself and set herself ablaze on fire. Upon being asked whether she has any enmity with anybody, she stated no. Upon being asked whether she want to say something more, Ratna stated that about two to three days back, her brother-in-law i.e. the accused No.1 had told the other two accused that Ratna's character is not good and that he would set her ablaze. Because of the threat, she poured kerosene and committed suicide. Her husband had not doubted her character.

8.1 In the cross examination, the witness stated that he had not met the Doctor who was treating Ratnaben. He had not verified as to whether Ratnaben was conscious after 19.4.19934 till the time of recording of dying declaration. He could not identify the signature of Doctor who was supposed to have certified that Ratnaben was conscious. When he reached the Ward, no member of the hospital staff was present.

9. Dr. Pravinbhai Kalidas Patel-PW5(exh.26) was working as RMO in Civil Hospital, Surat. He had brought the papers of treatment given to Ratnaben while she was admitted in the hospital. He stated that as per record, the patient had given history of catching fire accidentally while cooking at 8:50 at night. He stated that

such treatment was given by one Dr. Pandya, but he has since then left India and gone to America.

9.1 In the cross examination, he admitted that such patients are given pain killer to reduce the pain. From the record, he could say that the patient was given Fotvin at interval of six hours. He stated that the injuries could also have been caused due to accidental fire.

10. Omkar Makanbhai Sonavena-PW6 was examined at exh.29. He was the Investigating Officer. He stated that the deceased upon being asked informed him that accused were frequently quarreling with her in connection with the household work. Accused No.1 additionally used to allege that Ratnaben's character is bad and she has illicit relations. He would threaten her with life if she be caught. Since the deceased heard such utterances, she poured kerosene on herself and set herself ablaze.

10.1 In the cross examination, he admitted that the police received Vardi from Civil Hospital on 19.4.1993 at night in which it was stated that Ratna had got accidental burn injuries while trying to heat milk on a stove. He agreed that there is no time indicated in the recording of statement exh.30, nor it is recorded that Ratnaben was conscious. He agreed

that there is no endorsement of the Doctor treating the patient on record of Ratnaben being conscious. He did not inquire as to when Ratna regained consciousness. He denied that at the time when he recorded Ratnaben's statement, Ratnaben's family members had reached the hospital. He stated that before 3 O' Clock on 20.4.1993, he had not tried to record Ratnaben's statement. He also could not say as to when Ratnaben regained consciousness before he sent Yadi to the Executive Magistrate for recording the dying declaration. He agreed that Ratnaben's mother Sumanben did not state before the police that accused no.1 was attempting illicit relations with Ratnaben and accused Nos. 2 and 3 were pressurizing Ratnaben to do so. He denied that Ratnaben's mother, father brother and other relatives were present when he recorded Ratnaben's statement.

11. It is on the basis of above evidence that one has to judge the validity of conviction recorded by the learned Additional Sessions Judge against the appellants.

12. At the outset, it can be seen that primarily case of the prosecution is based on two alleged dying declarations made by deceased Ratnaben namely dying declaration exh.17 recorded by the Executive Magistrate-PW4(exh.15) and exh.30 recorded by the Investigating Officer-

PW6(exh.29). Though Rajendra Ambadas Sonavane-PW1(exh.8) brother of Ratnaben and Sumanben Ambalal-PW2(exh.11) who is mother of Ratnaben sought to throw some light on reasons leading to Ratnaben's unfortunate death, their deposition did not carry sufficient material to link the death with accused persons. Essentially, therefore, the prosecution case shall have to be judged on the validity of two dying declarations and same can be done by ascertaining whether the dying declarations inspire confidence and whether evidence in this regard is sufficient to convict the appellants.

13. I find that there are large number of internal contradictions in different versions put forth by different witnesses and in the form of dying declarations allegedly made by the deceased.

14. At the outset, one may recall that Yadi exh.18 recorded that the history in the hospital indicated that Ratnaben has got burnt accidentally. In fact, contents of exh.18 are quite elaborate. It suggests that Ratnaben when at about 9 O' clock at night of 19.4.1993 was heating milk on a Stove, there was a lamp burning since there was no light, the lamp fell on the burning stove causing a sudden fire in which Ratnaben's Saree got fire and she got burnt on the entire body. Dr. Pravinbhai Kalidas Patel-PW5(exh.26) stated that said history was

recorded as per the statement of Ratnaben when she was brought to the hospital. It is of-course true that such a history was recorded by Dr. Pandya who was not available with the hospital or even in India. But the fact remains that contemporaneous record suggests that first history given by the patient was one of accidental fire. Additionally, one also finds that Rajendra Ambadas Sonavane-PW1(exh.8) stated that he and other family members reached at hospital quarter to 12. They saw that Ratnaben had got severely burnt. She was not in a position to speak and could respond to the questions only in yes or no. Significantly, the dying declaration by the Executive Magistrate was recorded at 1:50 in the afternoon and one by the Investigating Officer at about 3 O' clock. Rajendra-PW1 went on to state that Ratnaben's condition continued to deteriorate. One may also recall that initially Ratnaben was in unconscious state. The hospital had indicated that police would be informed when Ratnaben regains consciousness. The Investigating Officer could give no details about when Ratnaben regained consciousness nor had he verified the exact time when she regained consciousness. Further he also had not taken the endorsement of the Doctor about Ratnaben being in proper state of mind to be able to give proper answers before he recorded her dying declaration. Executive Magistrate also did not take care to request the

Doctor treating Ratnaben to remain present when the dying declaration was being recorded. He only relied on the endorsement of Doctor stating that Ratnaben was conscious. From the treatment given to Ratnaben, it could be ascertained that she was given heavy doses of pain killer. Such heavy pain killing sedative medicines would surely have its effect. Coupled with the fact that earlier Ratnaben was unconscious, it would be all the more necessary for the Investigating Officer as well as the Executive Magistrate trying to record dying declaration to ascertain that Ratnaben was not only conscious but was also able to comprehend the questions and was able to give proper answers to such questions. No such care was taken by the Executive Magistrate or the Investigating Officer. This, coupled with the assertion of Rajendra-PW1 that Ratnaben was able to say only yes or no to the questions put to her at quarter to 12 in the afternoon and that her condition went on deteriorating thereafter, raises serious doubt about the ability of deceased to give proper answers to the questions recorded during the dying declaration. Contents of both the dying declarations are in contrast to the first revelations stated to have been made by the patient herself to the Medical Officer who started the treatment in which she suggested that she had accidentally caught fire while heating the milk. One may also not lose sight of

several material contradictions wherein Sumanben-PW2 had clearly stated that she and other family members were present when the police had recorded Ratnaben's statement. The Investigating Officer-PW6 in fact suggested that Ratnaben's relative had not reached the hospital when he recorded the statement. He categorically stated that when he recorded Ratnaben's statement, none of her relatives were present. This is in stark contrast to the assertion made by Sumanben-PW2. She also materially contradicted Rajendra-PW1 regarding the state of Ratnaben's condition. As noted, Rajendra-PW1 stated that Ratnaben was not in a position to talk and only responded by saying yes or no to the questions put to her. Sumanben-PW2 stated that Ratnaben answered the questions like ordinary person and gave fluent replies to the questions put to her by the police.

15. All these would caste a serious shadow on the manner of recording dying declarations and contents thereof. Additionally, I also find that prosecution case is based on number of statements which are self contradictory and full of omissions and improvements. Rajendra-PW1 could only state that Ratnaben had reported about the treatment when she had visited Ahmedabad about a month back. Sumanben-PW2 extended the theory stating that Ratnaben had trouble from the accused soon after accused No.1

started staying with family. She in fact stated that accused No.1 was demanding illicit relation with Ratnaben and accused Nos.2 and 3 were pressurising her to succumb to such demand. This one element is not borne out from any other material on record. In fact, if we look at the dying declarations recorded by two authorities, the cause indicated by the deceased lady for taking extreme step of about two to three days before the incident was that the accused No.1 had accused her of bad character and threatened her with serious consequences due to which she poured kerosene on herself and set herself ablaze. There is no narration of any previous incident contrary to what is sought to be suggested by Rajendra-PW1 and much contrary to what is sought to be suggested by Sumanben-PW2. In fact within two dying declarations also there are material differences. As per the dying declaration recorded by the Executive Magistrate, Ratnaben attributed her step to an incident two or three days before the event wherein the accused No.1 and probably other two accused had accused her of bad character and accused No.1 had threatened her to set her on fire. No further or other reason was stated. In the dying declaration, recorded by the Investigating Officer however, apparently, it is recorded that she used to have quarrel with her mother-in-law and sister-in-law about household work also.

16. Sumanben-PW2 further complicated the matter when she tried to suggest that accused No.1 was demanding illicit relation from Ratnaben and other two accused were pressurizing to do so. This has not come out on record from any other source. In the end, I find that there are far too many attempts to improve the version by prosecution witnesses. Dying declarations which could have otherwise thrown some light on the exact nature of the incident also do not satisfy the judicial conscience to inspire confidence and as being declarations properly recorded and of being by a person, was in proper condition to give proper replies. To reiterate, Doctor could not rule out the possibility of accidental fire. Before recording of dying declaration, neither the Executive Magistrate nor the police took proper care to ensure that the patient was in a proper condition to give statement. Ratnaben was unconscious earlier, when she regained consciousness and whether she was of proper state of mind to give answers, was not properly verified. Though the Investigating Officer stated that relatives of Ratnaben were not present when he recorded her statement, he is contradicted by Sumanben-PW2 mother of Ratnaben. The Investigating Officer had not noted the time of dying declaration, had not consulted the Doctor regarding the condition of Ratnaben's health. Some of the statements in two dying

declarations are internally also contradictory. Corroborative evidence in form of deposition of Rajendra-PW1 and Sumanben-PW2 does not inspire confidence on account of number of contradictions and improvements sought to be made by the witnesses. I find that appellants deserve benefit of doubt.

17. Alternatively, I also find that as per the revelations made in dying declaration, it is doubtful whether the appellants could be convicted under Section 306 of the Indian Penal Code. Particularly, appellants Nos. 2 and 3 were not attributed to have committed any act which would amount to abatement of suicide under Section 306 read with Section 114 of the Indian Penal Code. At the best it was a quarrel primarily on account of suspicious nature of appellant No.1 accusing Ratnaben of being characterless. Three days thereafter, Ratnaben is stated to have set herself ablaze. Assertion of Sumanben-PW2 that accused No.1 was demanding illicit relation from Ratnaben is not borne out from any evidence or in two dying declarations given by Ratnaben. Her assertion further that accused Nos. 2 and 3 were pressurizing Ratnaben to oblige accused No.1 would further demonstrate her anxiety to involve all the accused persons without proper basis.

18. In the result, I find that the prosecution

failed to establish the charges against all the appellants. They are therefore, acquitted of the charges. Conviction recorded against them is set aside.

19. The appeal succeeds. Bail bond stands cancelled. Fine paid if any be refunded.

(Akil Kureshi,J.)

(raghu)